

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

---

**HOMER G. PHILLIPS NURSES'  
ALUMNI, INC.,**

Plaintiff,

v.

**NORTHSIDE URGENT CARE  
HOSPITAL, INC. d/b/a HOMER G.  
PHILLIPS HOSPITAL,**

And

Case No. 4:22-cv-731 SEP

**HOMER G. PHILLIPS MEMORIAL  
HOSPITAL, INC. d/b/a HOMER G.  
PHILLIPS HOSPITAL,**

And

**NORTHSIDE URGENT CARE  
PROPERTY, LLC d/b/a HOMER G.  
PHILLIPS HOSPITAL,**

Defendants.

---

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants, by and through their undersigned attorneys, and as their Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure against Plaintiff Homer G. Phillips Nurses' Alumni, Inc., state as follows:

1. On July 11, 2022 Homer G. Phillips Nurses' Alumni, Inc. ("Nurses' Alumni") filed its Complaint. (Doc. 1.)
2. The Complaint alleges five (5) Counts:
  - I – Unfair Competition – Section 43(a) of the Lanham Act;
  - II - Trademark Infringement – Section 32 of the Lanham Act;

III. Trademark Dilution – Section 43(c) of the Lanham Act;

IV. Trademark Infringement – Mo.Rev.Stat. § 417.056; and

V. Trademark Dilution – Mo.Rev.Stat. § 417.061.

3. All of Plaintiff's claim arise out of the fact that, according to Plaintiff, the Defendants have responsibility for name Homer G. Phillips Memorial Hospital, which is currently being used for the first hospital located in North St. Louis, City since 1979.

4. The names HOMER G. PHILLIPS NURSES' ALUMNI, INC. and HOMER G. PHILLIPS HOSPITAL<sup>1</sup> are two distinct names clearly identifying two different organizations with two entirely different purposes.

5. One is an alumni association providing association services *for its members*; the other is a hospital, providing health care services.

6. No member of the public could reasonably be confused by two differently named organizations whose different activities are described by their very different names.

7. Plaintiff's name and mark is HOMER G. PHILLIPS NURSES' ALUMNI INC. – which immediately and unmistakably conveys to its members and to the public that it is an alumni organization for nurses who attended Homer G. Phillips nursing school.

8. In contrast, Defendants' name and mark is HOMER G. PHILLIPS HOSPITAL which immediately and unmistakably conveys to the public that that it is providing health care services.

---

<sup>1</sup> Homer G. Phillips Hospital is not the legal name of any defendant, it also not the name under which the hospital will operate. As stated in the Notification of Certificate of Need (Exhibit \_\_\_ to Defendants' Statement of Uncontroverted Material Facts in Support of Defendants' Motion for Summary Judgment the name of the hospital is HOMER G. PHILLIPS MEMORIAL HOPSITAL.

9. The marks are unmistakably different and their respective services are unrelated and non-competitive.

10. For the reasons more fully stated in Defendants' Statement of Uncontroverted Material Facts in Support of Its Motion for Summary Judgment and the Memorandum in Support of Defendants' Motion for Summary Judgment, which is incorporated herein by reference, Defendants are entitled to summary judgment in their favor on all Counts of Plaintiff's Complaint.

WHEREFORE, for the above stated reasons Defendants pray this Honorable Court for its Order and Judgment granting Summary Judgment in their favor and against Plaintiff on all counts of the Complaint and for such additional relief as the Court deems just and proper the circumstances.

Respectfully submitted,

STONE. LEYTON & GERSHMAN  
a Professional Corporation

By: /s/Joseph R. Dulle  
Joseph R. Dulle #38416MO

7733 Forsyth Blvd., Suite 500  
St. Louis, MO 63105  
Telephone: (314) 721-7011  
Facsimile: (314) 721-8660  
[jdule@stoneleyton.com](mailto:jdule@stoneleyton.com)  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on 28th day of June, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system and e-mailed and mailed via the U.S. mail, postage prepaid, to:

Richard A. Voytas, Jr., #52046  
David A. Weber, #70409  
7321 S. Lindbergh Blvd., Suite 101  
St. Louis, MO 63125  
Phone: 314.380.3166  
Email: rick@voytaslaw.com  
[david@voytaslaw.co](mailto:david@voytaslaw.co)  
*Attorneys for Plaintiff*

/s/Joseph R. Dulle